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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

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Flava Works, Inc.,)	
)	
Plaintiff,)	Case No. 2010-CV-0747
)	
)	
v.)	
)	Judge Castillo
Xavier Smith,)	
d/b/a IStackPorn.net)	
d/b/a StacksWorld.info)	Magistrate Judge Cole
d/b/a twitter.com/IStackPorn)	
d/b/a facebook.com/IStackPorn,)	
(alias IStackPorn))	
(alias Keith Heghes),)	
(alias "Soufbound"))	
Defendants.)	
-----X)	

FILED

MAR 09 2010 YM

Mar 09 2010

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

MOTION TO PERMIT ALTERNATE METHOD OF SERVICE OF PROCESS

Plaintiff Flava Works, Inc. ("Plaintiff"), by undersigned counsel, moves the Court, pursuant to Fed. R. Civ. P. 4(e)(1), to permit alternate service of process of the complaint and summons upon Defendant Xavier Smith ("Defendant") via E-mail and, in support of said motion, states as follows:

1. Pursuant to Fed. R. Civ. P. 4(c)(1), "an individual... may be served in a judicial district of the United States by... following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made."
2. Illinois statute 735 ILCS 5/2-203.1 provides: "If service upon an individual defendant is impractical...the plaintiff may move, without notice, that the court enter an order directing a comparable method of service. The motion shall be accompanied with an

affidavit stating the nature and extent of the investigation made to determine the whereabouts of the defendant and the reasons why service is impractical... including a specific statement showing that a diligent inquiry as to the location of the individual defendant was made and reasonable efforts to make service have been unsuccessful.

The court may order service to be made in any manner consistent with due process.”

3. The Northern District of Illinois has recognized alternate service by E-mail, pursuant to Illinois state law, as appropriate and comporting with due process. See Save-A-Life Found., Inc. v. Heimlich, 601 F. Supp. 2d 1005, 1010 (N.D. Ill. 2009) (service of summons and complaint upon Defendant via E-mail would have been proper had *both* the summons and complaint been sent via E-mail; however, service was improper where *only* complaint, and not summons, had been sent via E-mail).
4. The attached affidavit sets forth with specificity the requirements necessary, under the relevant state law, for the Court to order an alternate method of service of process.

WHEREFORE Plaintiff respectfully requests this Court grant its Motion to Permit Alternative Method of Service of Process, specifically service of process via E-mail, upon Defendant.

Dated: March 9, 2010

Respectfully Submitted,




Jesse Lanshe (Att. No. 6300294)
In-House Counsel
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Affidavit in Support of Motion to Permit Alternate Method of Service of Process

1. On February 4, 2010, Plaintiff, Flava Works, Inc. ("Plaintiff") filed a complaint against Defendant, Xavier Smith ("Defendant"), for Defendant's alleged copyright infringement via his website, and a summons was issued.
2. Defendant listed his website's registrant information as follows: Xavier Smith, 6455 Argyle Forest Blvd., Jacksonville, FL 32244; administrative contact: Xavier Smith – istackporn@yahoo.com
3. Plaintiff employed a process server in Jacksonville, Florida to serve the summons and complaint upon Defendant at the address listed above.
4. Plaintiff also instructed the process server to attempt to serve process at two separate addresses in Jacksonville that Plaintiff had reason to believe were associated with Defendant because of Plaintiff's background research of Defendant on Lexis.com.
5. On or around February 10, 2010, the process server informed Plaintiff that efforts to serve Xavier Smith had failed because "Xavier Smith" had been incarcerated since 7-31-2008, serving a two years and six months sentence for a cocaine offense.
6. This information caused Plaintiff to believe that "Xavier Smith" was not, in fact, the true owner of the offending copyright infringing website, and that Defendant's use of that name as contact information was mere subterfuge.
7. On February 19, 2010, Plaintiff sent Defendant's website's domain registrar, GoDaddy.com, Inc., a subpoena commanding GoDaddy.com to produce, among other things, the Defendant's true and correct identity and contact information to enable Plaintiff to serve process upon Defendant.
8. GoDaddy.com, Inc. has since failed to comply with the subpoena.
9. At this time, Plaintiff has no other method by which to locate and serve Defendant, other than via E-mail.
10. Plaintiff has a good faith belief that Defendant actively uses the above listed E-mail address by virtue of a taunting E-mail that was sent to Plaintiff by Defendant using said E-mail address. See attached Exhibit A.

Dated: March 9, 2010

Respectfully Submitted,



Jesse Lanshe (Att. No. 6300294)
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305-438-9450 ext. 307
Attorney for the Plaintiff
jesse@flavaworks.com

EXHIBIT A

Return-Path: <istackporn@yahoo.com>
Delivered-To: phil@flavaworks.com
X-Spam-Checker-Version: SpamAssassin 3.1.0 (2005-09-13) on
chi01-003-27.nozone.net.com
Received: (qmail 21135 invoked by uid 108); 23 Dec 2009 20:33:50 -0000
Received: from n11-vm0.bullet.mail.ac4.yahoo.com (74.6.228.104)
by mail.flavaworks.com with SMTP; 23 Dec 2009 20:33:50 -0000
Received: from [74.6.228.95] by n11.bullet.mail.ac4.yahoo.com with NNFP; 23 Dec 2009 20:33:49 -0000
Received: from [74.6.228.81] by t2.bullet.mail.ac4.yahoo.com with NNFP; 23 Dec 2009 20:33:49 -0000
Received: from [127.0.0.1] by omp1002.mail.ac4.yahoo.com with NNFP; 23 Dec 2009 20:33:49 -0000
X-Yahoo-Newman-Property: ymail-5
X-Yahoo-Newman-Id: 522186.B276.bm@omp1002.mail.ac4.yahoo.com
Received: (qmail 76662 invoked by uid 60001); 23 Dec 2009 20:33:49 -0000
DKIM-Signature: v=1; a=rsa-sha256; c=relaxed/relaxed; d=yahoo.com; s=s1024; t=1261600429;
bh=fzOPdJuQPuPyhKFtGoZWsa3Ri8Sys+efRRtNtaYPlk=: h=Message-ID:X-YMail-OSG:Received:X-Mailer:Date:From:Subject:To:MIME-
Version:Content-Type;
b=fZHD/38WoYs41UgQDBG2rPuE4tTQKmvq4NXhXKzhlg2U9auT7cvl2jdkMIZrEuIIob6wEf+y4nKslZ695nP2ZDahGJ2QDIExVeS7rKFyDRki9/wew0Qf
DomainKey-Signature:a=rsa-sha1; q=dns; c=noews;
s=s1024; d=yahoo.com;
h=Message-ID:X-YMail-OSG:Received:X-Mailer:Date:From:Subject:To:MIME-Version:Content-Type;

b=AOpUhaOBjOiqRYyJRYZBA52IUzcUw1muzWfISoBrBDy5BJgXb6a6JAJV30KuY0zTKLd4A1EkUXTrUrAea9kLRp3COCVhx34sn207IjY63+IHc/6ffd;
Message-ID: <296402.75609.qm@web59613.mail.ac4.yahoo.com>
X-YMail-OSG:
PieQT4MVMlKAcLPNHfni6cfIgrpiMfbo3M7vtYdMuyvZg5hmCHhR_ruBmpnWdAaRxVYbX5EnzIkt7oPxoNookfBdTnItQTPbWNQXo43Y55eu_Vs_8d3l
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Received: from [96.26.145.123] by web59613.mail.ac4.yahoo.com via HTTP; Wed, 23 Dec 2009 12:33:49 PST
X-Mailer: YahooMailRC/240.3 YahooMailWebService/0.8.100.260964
Date: Wed, 23 Dec 2009 12:33:49 -0800 (PST)
From: stack porn <istackporn@yahoo.com>
Subject: U just wont learn How
To: phil@flavaworks.com
MIME-Version: 1.0
Content-Type: multipart/alternative; boundary="0-855958705-1261600429-75609"

(s)

